



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

FRANCISCA HERNANDEZ,
Complainant,

and

KNEAD DOUGH BAKING,
COMPANY, INC., and JOSE
GONZALEZ,
Respondents.

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)**Charge No: 2000 CF 1957**
)**EEOC No: 21 BA 01327**
)**ALS No: 11461**
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RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's Motion to Dismiss filed August 6, 2001.
Respondent appeared through counsel; Complainant did not appear. Complainant has not
filed a response. This matter is ready for decision.

Findings of Fact

1. Complainant filed a Charge of Discrimination against the Respondents with the
Illinois Department of Human Rights (Department) on March 2, 2000.
2. On February 9, 2001, the Department filed a Complaint on behalf of the Complainant
alleging Complainant to have been aggrieved by practices of sexual harassment and
retaliatory discrimination in violation of the Illinois Human Rights Act (Act), 775
ILCS 5/1-101 et.seq.
3. Both Respondents filed an answer to the Complaint on March 22, 2001 and March
23, 2001, respectively
4. On April 9, 2001, Complainant did not appear. A scheduling order was entered along
with an order granting Respondent's motion to take Complainant's deposition.
5. On May 9, 2001, Respondent filed a proof of service of Notice of Deposition of
Complainant.
6. On May 23, 2001, Complainant's attorney filed a motion for substitution of attorney.
7. On May 31, 2001, a new scheduling order was entered and Complainant's new
counsel was granted leave to file an appearance.
8. On July 31, 2001, Complainant's new attorney filed a motion to withdraw.
9. Respondent filed a Motion to Dismiss on August 6, 2001.
10. On September 26, 2001, Respondent appeared; Complainant's counsel appeared;
Complainant did not appear personally; an order was entered granting Complainant's
counsel's motion to withdraw, giving Complainant until October 12, 2001 to file an
appearance of substitute counsel, giving Complainant until October 26, 2001 to file a

response to Respondent's motion to dismiss, and setting the matter for status on January 8, 2002.

11. On January 8, 2002, Respondent appeared; Complainant did not appear.

12. Complainant had not filed a response to Respondent's motion to dismiss.

Discussion

Respondent's motion contends that Complainant's deposition was scheduled for July 10, 2001; however Complainant's counsel informed Respondent that she was not able to produce Complainant for deposition because Complainant may be in the process of obtaining another attorney. Respondent has had no communication for Complainant as to her availability for deposition or notification of substitute counsel. Respondent argues that Complainant has failed to cooperate in the discovery process and has refused to prosecute this matter.

Complainant was ordered to file a response to this motion no later than October 26, 2001; Complainant has failed to do so. Complainant did not appear at the September 26, 2001 hearing and did not appear for the current status hearing on January 8, 2002. Further, Complainant has failed to be available for an agreed deposition and has otherwise failed to do anything to advance her case to final resolution. The Illinois Human Rights Act at 775 ILCS 5/8A-102(I)(6), authorizes a recommended order of dismissal with prejudice or an order of default as a sanction for the failure of a party to prosecute his case or appear at a hearing or otherwise comply with this Act, the rules of the Commission, or a previous order of the hearing officer. Section 5300.750(e) of the Procedural Rules of the Illinois Human Rights Commission authorizes a recommendation of dismissal with prejudice as a sanction where a party has failed to appear at a scheduled hearing without requesting a continuance reasonably in advance, or unreasonably refuses to comply with any Order entered, or otherwise engages in conduct which unreasonably delays proceedings.

Conclusions of Law

Complainant's failure to appear at the September 26, 2001 hearing, her failure to appear at the current status hearing on January 8, 2002, her failure to appear for a noticed deposition and her failure to file a response to the instant motion to dismiss have resulted in unreasonable delay, justifying dismissal of this matter with prejudice.

Determination

Complainant's conduct has resulted in unreasonable delay and renders it difficult for the Commission to take any action with regard to this case except to dismiss it.

Recommendation

I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

Hernandez and Knead Dough Baking
11461 pg. 3 of 3

HUMAN RIGHTS COMMISSION

BY: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: January 15, 2002